

B. letter of Mr. Pollak
to the EEOC on
their program, and response

- February 5, 1968

*Local 38
(Cleveland)*

February 5, 1968

Honorable Clifford L. Alexander
Chairman, Equal Employment
Opportunity Commission
1800 G Street, Northwest
Washington, D. C.

Dear Mr. Alexander:

I attach a memorandum which analyzes the difficulties we see with the proposed conciliation agreement proposed to your agency by Local 38, IBEW, and the JAC of Cleveland, Ohio. Also, for additional background, I am enclosing our October 13, 1967 letter to the defense attorney setting out our basis for settlement of the lawsuit.

In terms of our litigation responsibility, I would appreciate your advising me what action you propose to take on the agreement.

Sincerely,

STEPHEN J. POLLAK
Assistant Attorney General
Civil Rights Division

Mr. Fiss

February 5, 1968

Conciliation Agreement Proposed to the Equal Employment Opportunity Commission by the International Brotherhood of Electrical Workers, Local No. 38, and Its Joint Apprenticeship Committee, Cleveland, Ohio.

Introduction

This memorandum analyzes the proposed conciliation agreement in terms of the Department's proposals for compliance with Title VII which were presented to the parties during negotiations last summer and again by letter dated October 13, 1967. We gave copies of that letter to Mr. Andrew Muse, EEOC conciliation section, on November 16, 1967, when we spoke with him about the first draft of the conciliation agreement, and later to Mr. Chester Gray, regional director of the EEOC at Cleveland. We offered to let EEOC personnel examine our investigative files which they have not done.

In our judgment the proposed agreement is inadequate in two broad respects: it does not provide sufficient safeguards to insure that this union and its JAC will not practice racial discrimination in the future, and it does not require the parties to take any steps to reduce or eliminate the effects of past discrimination. The deficiencies of the proposed agreement may be illustrated with reference to each of the four areas of discrimination charged in our complaint.

Admission of Journeymen

With regard to the admission of journeymen, the agreement requires only that Negroes be admitted on the same basis as whites. Because Negroes have been excluded from membership as journeymen and apprentices (which, in recent years, has been the only avenue of admission, according to the union), we insisted, in our letter of October 13, that the union admit directly as journeymen qualified Negroes who are too old for the apprentice program. The Local 38 proposal does not deal with this problem.

Admission of Apprentices

With regard to the apprenticeship program, the proposed agreement adopts with minor modifications the "Procedure for Selection of Apprentices for the Electrical Contracting Industry" developed by the National Joint Apprenticeship and Training Committee in 1963 and approved by the Department of Labor in 1966 as consistent with its apprentice regulations. During our negotiations, the JAC presented those same selection procedures for our consideration. After careful scrutiny and discussion with the JAC, we rejected that method because the assignment of a grade for each applicant was left almost entirely to the uncontrolled discretion of the individual members of the JAC. In fact this method is more subjective than the old procedures which our court action seeks to enjoin. Such a subjective system makes it nearly impossible for any third party to

review objectively the basis upon which candidates are accepted or rejected. Objectivity and reviewability in the selection of apprentices are essential requirements of Title VII.

Under the old system, 50% of the evaluation was assigned to an oral interview which we found served as the vehicle of discrimination. Consequently, during negotiations and in our letter of October 13, we took the position that such an interview comprised no more than 10% of the selection process. Under Local 38's proposed agreement, "the oral interview will be granted consideration of no more than 25% grade evaluation." Apart from our objection that this gives too much weight to oral factors, in the context of an almost totally subjective system, the limitation is meaningless.

Local 38's proposed agreement does recite that the 13 Negro apprentice applicants, whom we identified as having been excluded from the program because of their race in August, 1965, and July, 1966, were offered admission as apprentices in the fall class of 1967. Three accepted. During our negotiations, we brought these facts to the attention of the JAC which stated that, if settlement were reached, these Negro applicants would be offered places in the program. When negotiations terminated, the JAC said that the offers would still be made even though the entire matter had not been settled.

The Job Referral System

The operation of the hiring hall referral system is a third area treated by the Local 38 proposal. The draft agreement accepts the four group system of referral as presently defined in the collective bargaining agreement and requires only that non-union Negroes be referred on the same basis as white and Negro union members. This measure alone is deficient because it does not deal with the effects of past discrimination. In our analysis of the referral system, we found not only that Negroes had been excluded, but that whites were not held to the group standards. Union membership alone determined the group out of which whites were referred. Because Negroes were

denied the opportunity to gain the experience necessary to qualify for referral under a group priority system and because whites were never held to those requirements, it is inadequate under Title VII to permit the union now to operate the four group referral system, even if we were certain it would be operated fairly.

We should also note that the union proposal on the referral system really requires only the non-union members be treated on the same basis as union members, a requirement which has been a part of federal law since 1947.

Affiliation with Negro Contractors

In the matter of affiliation with the union by Negro electrical contractors, or by white contractors with Negro employees, the Local 38 proposal requires that the union enter into collective bargaining agreements with such employers "on the same terms and conditions as offered to white contractors." The draft agreement does not reflect what standards, if any, were used in the past as a basis for entering into collective agreements with white contractors. Such an inquiry is necessary to insure that the union will not now impose higher, prohibitive requirements with the effect of excluding Negroes, a concern which is reflected in our October 13 letter. In addition the standards for future affiliation are not stated, but are left to the discretion of the union. Only a General assurance of non-discriminatory treatment is given.

Reporting Provisions

Local 38's draft agreement is deficient with respect to reporting provisions. No reporting requirements are set forth with respect to the admission of journeymen and affiliation with contractors under collective agreements. With regard to the reporting provisions dealing with the apprentice program and the referral system, a comparison with the Department's proposed decree in St. Louis (copy attached) reveals their inadequacies. For example, the Local 38 proposal requires only that the union report the number

and race of persons referred from the hiring hall, and the name and race of the contractor to whom each was sent. Having accepted the four group system, the Local 38 proposal does not ask for the statistics by group. Nor does it ask for information which would provide a basis for determining whether the four group system is, in fact, operating on a non-discriminatory basis either with respect to race or union membership.